

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of JANET KING, Deceased.

JUDITH KING, DENNIS KING, and ROBERT
KING,

UNPUBLISHED
January 31, 2006

Petitioners-Appellants,

v

MARJORIE KING and PETER C KENNEY,
Personal Representative of the Estate of JANET
KING, deceased,

No. 263497
Washtenaw Probate Court
LC No. 03-00025-DE

Respondents-Appellees.

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

After the deceased, Janet King, became incompetent, her husband, Austin, instructed their daughter Marjorie to transfer funds from a joint account held by him and Janet to a joint account between him and Marjorie. Per his instruction, Marjorie removed the funds from the joint account between Austin and Janet pursuant to a power of attorney Austin had executed. Austin also retitled U.S. savings bonds he co-owned with Janet into his own name. Petitioners asked the probate court to set aside the transfer of the funds removed from the joint account between Austin and Janet and the retitling of the bonds and to order the funds and bonds be conveyed to Janet's estate. Petitioners appeal as of right the probate court order granting summary disposition in favor of respondents. We affirm.

Petitioners first argue that Marjorie exceeded the scope of the power of attorney in transferring the funds between the joint accounts because the transfer acted as a gift and a will substitute and the power of attorney expressly prohibited Marjorie from making gifts or will substitutes on Austin's behalf. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004). Respondents moved for summary disposition under MCR 2.116(C)(8) (failure to state a claim upon which relief can be granted) and (10) (no genuine issue of material fact). While the trial court did not specify the subrule under which it based its grant of summary disposition in favor of respondents, it indicated that it

had considered documentary evidence beyond the pleadings; therefore, we will treat the motion as having been granted under (C)(10). *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in a light most favorable to the nonmoving party. *Id.* A motion for summary disposition under MCR 2.116(C)(10) may be granted when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The power of attorney executed by Austin stated, “[M]y agent (1) may not execute a will, a codicil, or any will substitute on my behalf; . . . [and] (3) may not make gifts on my behalf” We recognize that a power of attorney provides an agent with all the rights and responsibilities as outlined in the agreement, *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004), and that a power of attorney is strictly construed and cannot be enlarged by construction. *Kuite v Lage*, 152 Mich 638, 640; 116 NW 467 (1908). Even assuming the transfer between the joint accounts was either a gift or a will substitute, Marjorie did not make the transfer on Austin’s behalf; she made it at his behest. Austin, not Marjorie, decided to set up the joint account with Marjorie and to fund it with money from the joint accounts he had with Janet. After Austin made these decisions, Marjorie simply acted as his functionary in carrying out the physical aspects of his decisions because Austin was unable to do so because of health reasons. Because Marjorie acted only as Austin’s functionary in transferring the money between the joint accounts, the transfers were not beyond the scope of the power of attorney.

Petitioners next argue that Austin’s act of transferring the money from the joint account between him and Janet and retitling the savings bonds amounted to conversion which deprived Janet of her remainder interest in their joint accounts and in the bonds. We disagree.

Conversion is “any distinct act of domain wrongfully exerted over another’s personal property in denial of or inconsistent with the rights therein.” *Lawsuit Financial, LLC v Curry*, 261 Mich App 579, 591; 683 NW2d 233 (2004), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). A holder of a joint account may withdraw the entire account. *Dep’t of Treas v Comerica Bank*, 201 Mich App 318, 325; 506 NW2d 283 (1993). See also *In re Wright Estate*, 430 Mich 463, 469 n 7; 424 NW2d 268 (1988) and *Meigs v Thayer*, 289 Mich 680, 683; 287 NW 342 (1939). A U.S. savings bond may be redeemed by either of the co-owners. 31 CFR § 315.37; *Guldager v United States*, 204 F2d 487, 489 (CA 6, 1953). Because Austin was a holder of the joint accounts and a co-owner of the bonds, there was no conversion because he had a right to withdraw funds from the accounts and to redeem the bonds. In addition, petitioners have not presented any evidence that it was against Janet’s expressed intentions for Austin to withdraw funds from the accounts or to redeem the bonds.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White